

Tax Key #168-05301-0125

Project: Cumberland Ave. Reconstruction, Ph. 1
City: West Lafayette
County: Tippecanoe
Owner: SH Pool A Peppermill Village, LLC

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (this "**Agreement**") is entered into this 29th day of November, 2010, (the "**Effective Date**") by and between **SH POOL A PEPPERMILL VILLAGE, LLC**, a Delaware limited liability company ("**Grantor**"), and the **CITY OF WEST LAFAYETTE, INDIANA** ("**Grantee**").

RECITALS

A. Grantor owns certain real property (the "**Grantor's Parcel**") in Tippecanoe County, Indiana commonly known as the Peppermill Village Apartments, located on the Northwest corner of Cumberland Avenue and Yeager Road in West Lafayette, Indiana.

B. Grantee desires to obtain a temporary, non-exclusive construction easement on, over, and across a portion of the Grantor's Parcel (the "**Easement Area**") for regrading of slope to maintain the existing topography tiein to the multi-use trail and for the storage of material, equipment and machinery to be used in connection with constructing, installing, and maintaining (during installation) a multi-use trail and roadway improvements along Cumberland Avenue (the "**Construction Activities**"), and Grantor is willing to grant the easement to Grantee for such purposes, subject to the terms and conditions set forth herein. The Easement Area is more particularly described in the attached Exhibit A and depicted in the attached Exhibit B. Should there be any discrepancy between the description and the depiction, the description shall control.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. **Grant of Easement.** Grantor hereby conveys to Grantee and its successors and assigns, a temporary, non-exclusive easement and right on, over and across the Easement Area for the sole purpose of regrading, the storage of material, equipment and machinery used or to be used for the Construction Activities, as well as the parking of vehicles for persons working on the Construction Activities. Grantee agrees that at no time during the term of this Agreement shall Grantee or its contractors block access to Grantor's Parcel or any driveways servicing Grantor's Parcel. Grantee agrees that it shall not unreasonably interfere with the tenants of Grantor on Grantor's Parcel during the term of this Agreement. Within sixty (60) days from the termination of this easement, Grantee shall restore the Easement Area to its condition as of the Effective Date, as same may require alterations based upon the

Construction Activities, including but not limited to, any repairing any damage to Grantor's utility systems located on the Easement Area to the extent such damage is caused by Grantee or Grantee's Agents (as hereinafter defined).

2. **Term.** This easement will automatically terminate on the earlier of (i) the date that the Construction Activities are complete or (ii) January 1, 2011 (the "**Termination Date**"). Grantee warrants that it shall remove all of its or Grantor's Agents' personal property from the Easement Area on or before the Termination Date. If such personal property is not removed within (60) days after the Termination Date, said personal property shall be deemed to be abandoned and Grantor may proceed to dispose of such property at its sole discretion with any associated costs of removal and/or disposal being the responsibility of Grantee.

3. **Access.** Grantee and its agents, employees, consultants, contractors and subcontractors (collectively, "**Grantee's Agents**") shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee and Grantee's Agents shall enter upon the Easement Area at their sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and Grantee's Agents. Grantee acknowledges that mature trees are located near the Easement Area and warrants that it shall take measures necessary to protect such trees during performance of the Construction Activities. Grantee also acknowledges that certain underground utilities do exist on Grantor's Parcel and/or within the Easement Area and warrants that any damages caused thereto in the course of the Construction Activities shall be the sole responsibility of Grantee to repair and/or replace such utilities in the event any such damage occurs and Grantee shall indemnify and hold Grantor harmless from any damages as a result of the Construction Activities (as more specifically set forth in Section 7 hereof). Grantee and Grantee's Agents shall use due care in connection with the Construction Activities.

4. **Condition of the Easement Area.** Grantee accepts the Easement Area and all aspects thereof in an "as is", "with all faults" condition. Grantee shall obtain any and all applicable consents, approvals, permissions, and agreements to cross, encumber or encroach upon any other easements or rights of others ("**Third Parties**") related to its use and improvement of the Easement Area.

5. **Compliance with Laws.** With regard to its Construction Activities, Grantee will comply with all applicable present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary.

6. **Liens.** Grantee shall keep the Grantor's Parcel free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Grantor's Parcel pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents. Any such liens shall be released of record within thirty (30) days. The provisions contained in this Section 6 shall survive the Termination Date.

7. **Indemnification.** Subject to the limitations imposed by statutes and constitutional provisions of the State of Indiana designed to protect the exposure and liability of Grantee as an

instrumentality of the State of Indiana (including, without limitation, actions and conditions as to which Grantee is immunized by the Indiana Tort Claims Act, dollar limits stated therein, exemption from punitive damages, and the continued ability to defeat a claim by reason of contributory negligence or fault of claimant) (collectively, the “Tort Claims Act”), Grantee shall indemnify and hold Grantor safe and harmless from and against any and all claims, actions, causes of action, damages, costs, injuries or other liabilities incurred by or asserted against Grantor as a result of or in connection with Grantee’s entry upon the Easement Area, or any investigation, test, examination or other action taken by Grantee or its employees, agents or contractors with respect to the Easement Area. Nothing contained herein shall be deemed to modify the provisions of the Tort Claims Act or to expand or limit Grantee’s protections or liability contemplated thereunder, and this Agreement shall be deemed amended as necessary to comply with any and all applicable provisions of the Tort Claims Act. The provisions contained in this Section 7 shall survive the Termination Date.

8. **Insurance.** During the term of this Agreement, Grantee and its subcontractors and agents shall each obtain and keep in full force and effect, general commercial liability insurance and automobile liability insurance for owned, hired or non-owned vehicles, issued by an “A:VI” or better rated insurance carrier as rated by A.M. Best Company as of the date that Grantee or its subcontractors or agents, as applicable, obtains or renews its insurance policies, on an occurrence basis, in which Grantor, its officers, employees, agents and representatives are named as additional insureds with Grantee or its subcontractors or agents, as applicable, and worker’s compensation insurance, as required by applicable law. Grantee shall furnish a certificate or certificates of insurance to Grantor prior to the execution of this Agreement evidencing the foregoing and shall furnish complete copies of such policy or policies upon request by Grantor. The protection offered by each such insurance policy or policies shall provide a combined single limit policy for both personal injury and property damage in the amount of \$5,000,000, which shall be considered equivalent to the required minimum limits. Without limiting the foregoing, prior to the commencement of any Construction Activities, to the extent permitted by this Agreement or with the express written consent of Grantor, Grantee shall furnish to Grantor evidence that the policy or policies of insurance required hereunder bear an endorsement or shall have attached a rider providing that Grantor shall be notified not less than thirty (30) days before any expiration, cancellation, non-renewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium. Acceptance of the insurance certificates and endorsements to the extent required under this Agreement shall not relieve Grantee from liability under the indemnification and hold harmless provision set forth in Section 7 hereof. The indemnification and hold harmless provision shall apply whether or not such insurance policies be determined to be applicable to any damage or claim for damage.

9. **Notices.** All notices, requests, demands, consents, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly and properly given three (3) business days after the date of mailing if deposited in a receptacle of the United States mail, first class postage prepaid, addressed to the intended recipient as follows:

Grantor	SH Pool A Peppermill Village, LLC
	191 N. Wacker Drive, Suite 2500
	Chicago, IL 60606
	ATTN: Robert Hayes

with a copy to: Bingham McHale LLP
2700 Market Tower
10 W. Market Street
Indianapolis, IN 46204
ATTN: Joseph P. Hawkins

with a copy to: Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067
ATTN: Amy Wells

Grantee: City of West Lafayette, Indiana
609 West Navajo Street
West Lafayette, Indiana 47906
ATTN: David M. Buck, PE (City Engineer)

with a copy to: Withered Burns and Persin, LLP
8 North 3rd Street, Suite 401
Lafayette, IN 47902
ATTN: Eric H. Burns

Either party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

10. Miscellaneous.

10.1 **Interpretation.** Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

10.2 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana.

10.3 **Run with the Land/Successors.** Subject to the terms and conditions of this Agreement, the easement granted herein shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns. This Agreement shall not be assigned by Grantee without Grantor's prior written consent.

10.4 **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof.

Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the parties.

10.5 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

10.6 **Rights and Remedies.** The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute (unless addressed in other agreements by and between the parties) or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

10.7 **Enforceability and Litigation Expenses.** If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, costs and expenses, shall be paid by the non-prevailing party.

10.8 **Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

10.9 **Contractors and Subcontractors.** Grantee agrees that it shall cause all employees, contractors, subcontractors and any other party acting on behalf of Grantee in connection with the Construction Activities to comply with the terms and provisions of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed on the dates indicated below, to be effective as of the Effective Date.

GRANTOR:

SH POOL A PEPPERMILL VILLAGE, LLC,
a Delaware limited liability company

By: SH Partner, LLC, a Delaware limited liability company,
its sole member

By: California State Teachers' Retirement System,
a public entity, its sole member

By: 
Name: Christopher J. Ailman
Its: Chief Investment Officer

GRANTEE:

CITY OF WEST LAFAYETTE, INDIANA

By: _____
Name: _____
Its: _____
SEE ATTACHED

[Notary blocks on following page]

Temporary Construction Easement, Cumberland Ave. Reconstruction, Ph. 1

APPROVED:

DATE: _____

CITY OF WEST LAFAYETTE
BOARD OF PUBLIC WORKS AND SAFETY

John R. Dennis, Mayor

Sana G. Booker, Member

Bradley W. Marley, Member

Jonathan C. Speaker, Member

Elizabeth M. Stull, Member

Attest:

Clerk-Treasurer Judith C. Rhodes

STATE OF CALIFORNIA

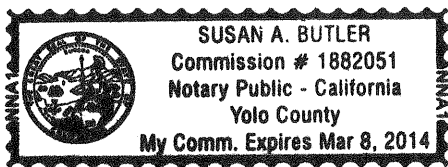
COUNTY OF YOLO

)
) ss:
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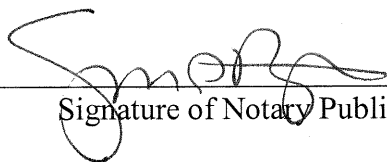
On Nov 18, 2010 before me, Susan A. Butler, Notary Public, personally appeared Christopher J. Ailman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Seal]



Signature of Notary Public

COUNTY OF TIPPECANOE)

Before me, a Notary Public in and for said County and State, personally appeared _____, the duly authorized representative of the City of West Lafayette, Indiana, whom acknowledged the execution of the foregoing Temporary Construction Easement on behalf of such City for the uses and purposes contained therein.

WITNESS my hand and Notarial Seal this _____ day of _____, 2010.

Signature

Printed

NOTARY PUBLIC

My Commission Expires:

County of Residence:

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, the duly authorized _____ of the California State Teachers' Retirement System, the sole member of SH Partner, LLC, the sole member of SH Pool A Peppermill Village, LLC, whom acknowledged the execution of the foregoing Temporary Construction Easement on behalf of such limited liability company for the uses and purposes contained therein.

WITNESS my hand and Notarial Seal this _____ day of _____, 2010.

Signature

Printed

NOTARY PUBLIC

My Commission Expires:

County of Residence:

This instrument was prepared by (and return original to): Joseph Pierce Hawkins, Esq., Bingham McHale LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:

Joseph P. Hawkins, Attorney-at-Law

Exhibit "A"

Legal Description of Temporary Construction Easement

Designation:
Parcel: 19 Temporary R/W
Form: WD-1

Sheet 1 of 1
Code: N/A

A Part of the Property described as Instrument Number 06000284 recorded in the Office of the Tippecanoe County Recorder located in the Southeast Quarter of the Southeast Quarter of Section 1, Township 23 North, Range 5 West, City of West Lafayette, Tippecanoe County, Indiana, more particularly described as follows:

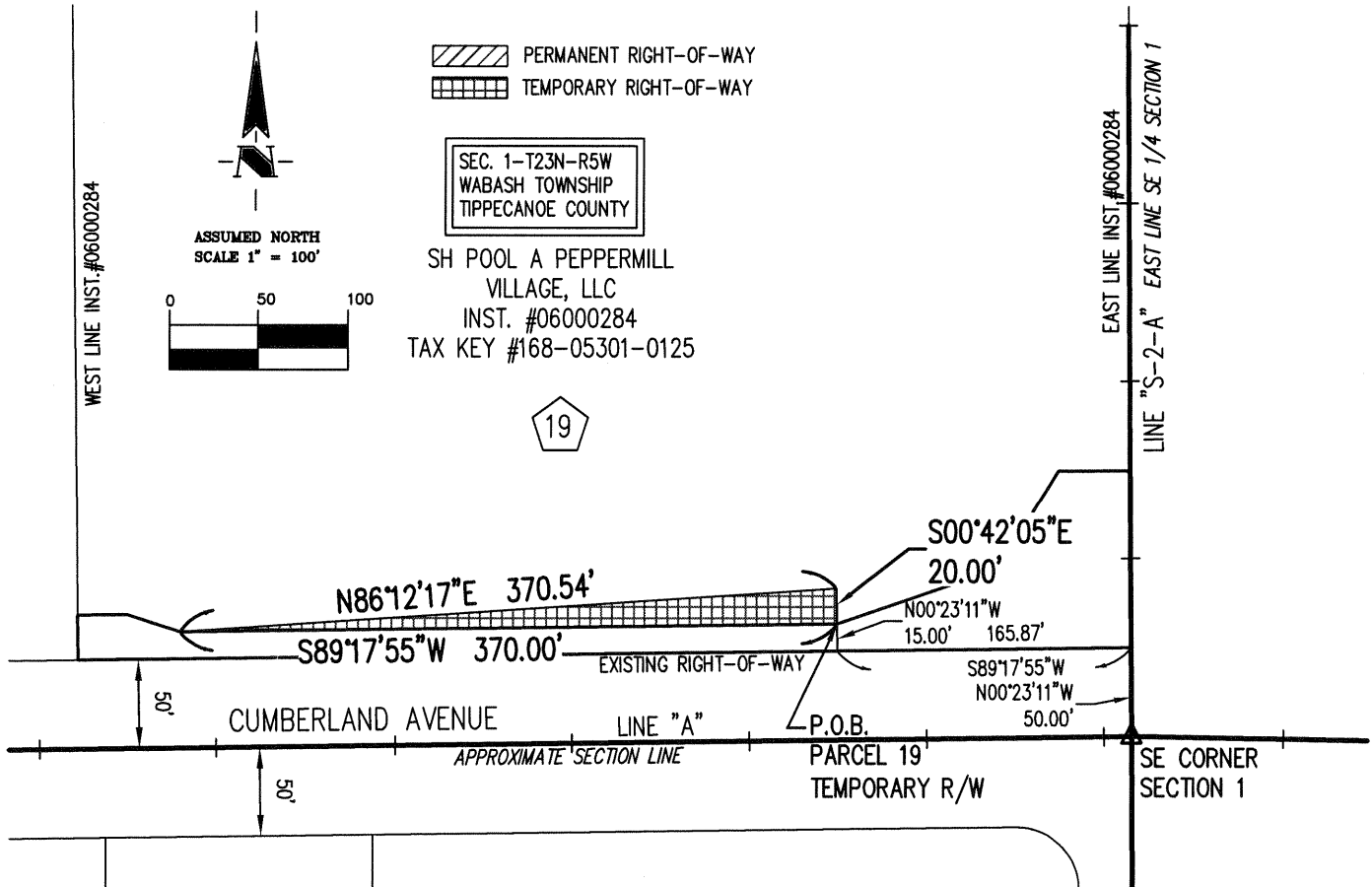
Commencing at a point on the East Line of said Southeast Quarter, said point being North 00 degrees 23 minutes 11 seconds West a distance of 50.00 feet of the Southeast Corner of said Southeast Quarter; thence South 89 degrees 17 minutes 55 seconds West along the North Right Of Way Line of Cumberland Avenue a distance of 165.87 feet; thence North 00 degrees 23 minutes 11 seconds West parallel with said East Line a distance of 15.00 feet to the Point of Beginning; thence South 89 degrees 17 minutes 55 seconds West parallel with said North Right Of Way Line a distance of 370.00 feet; thence North 86 degrees 12 minutes 17 seconds East a distance of 370.54 feet; thence South 00 degrees 42 minutes 05 seconds East a distance of 20.00 feet to the Point of Beginning, containing 0.085 acres of land, more or less.

NOTE: The land description hereon is based on the Cumberland Avenue Phase 1 Route Survey for the City of West Lafayette dated January 27, 2009 and recorded in Instrument Number 200909016190 in the Office of the Tippecanoe County Recorder. (See attached Survey)

Exhibit “B”

Depiction of Temporary Construction Easement

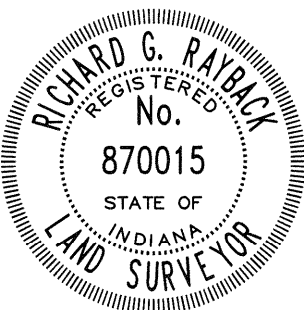
[See attached]



Parcel 19 Temporary Right-of-Way Description

A Part of the Property described as Instrument Number 06000284 recorded in the Office of the Tippecanoe County Recorder located in the Southeast Quarter of the Southeast Quarter of Section 1, Township 23 North, Range 5 West, City of West Lafayette, Tippecanoe County, Indiana, more particularly described as follows:

Commencing at a point on the East Line of said Southeast Quarter, said point being North 00 degrees 23 minutes 11 seconds West a distance of 50.00 feet of the Southeast Corner of said Southeast Quarter; thence South 89 degrees 17 minutes 55 seconds West along the North Right-of-Way Line of Cumberland Avenue a distance of 165.87 feet; thence North 00 degrees 23 minutes 11 seconds West parallel with said East Line a distance of 15.00 feet to the Point of Beginning; thence South 89 degrees 17 minutes 55 seconds West parallel with said North Right-of-Way Line a distance of 370.00 feet; thence North 86 degrees 12 minutes 17 seconds East a distance of 370.54 feet; thence South 00 degrees 42 minutes 05 seconds East a distance of 20.00 feet to the Point of Beginning, containing 0.085 acres of land, more or less.



Richard G. Rayback
 Richard G. Rayback
 Registered Land Surveyor No. 870015
 August 12, 2009

Historic Fort Harrison
 8901 Otis Avenue
 Indianapolis, Indiana 46216-1037
 317-826-7100
 317-826-7110 FAX

Note: The land description shown hereon is based on the Cumberland Avenue Phase 1 Route Survey for the City of West Lafayette dated January 27, 2009 and recorded at Instrument Number 200909016190 in the Office of the Tippecanoe County Recorder.

Engineering
 Surveying
 Landscape Architecture
 GIS LIS
 Geology

